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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of MCI WORLDCOM, INC. Petition for Declaratory Ruling Regarding the Process of Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.909 of the Commission's Rules	CC Docket No. 00-45

COMMENTS OF GLOBAL NAPS, INC. AND UNIVERSAL TELECOM, INC.

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1. Introduction and Summary

Global NAPS, Inc. ("Global NAPS") and Universal Telecom, Inc. ("Universal") wholeheartedly support MCI WorldCom's ("MCI") Petition.[1] If the Commission grants MCI's requests regarding the Section 252(i) adoption process, competitive local exchange carriers ("CLECs") will be able to enter new markets more quickly and with less expense. A Declaratory Ruling addressing MCI's requests could significantly reduce the legal and administrative costs currently associated with opting-in to existing agreements. Global NAPS and Universal concur with *all* of MCI's points and wish to set forth certain additional grounds upon which a Declaratory

[1] MCI WorldCom Petition for Expedited Declaratory Ruling, CC Docket No. 00-45 (filed March 7, 2000) ("Petition").

Ruling should be issued.

Section 252(i) allows any CLEC to take advantage of the terms of any approved agreement to which the ILEC is a party. Under 252(i) — at least in theory — any CLEC can demand exactly the same terms and conditions the ILEC has agreed to with any other CLEC. By establishing that any CLEC may get the same deal that any other CLEC got, Section 252(i) expedites market entry by allowing the latest CLEC entrants to avoid the time and expense of negotiating (and perhaps arbitrating) a hand-crafted interconnection agreement if an acceptable agreement has already been approved by the relevant state commission. Thus, theoretically, in any ILEC/CLEC negotiation, the terms contained in existing interconnection agreements are "on the table" as a matter of law, so that the CLEC may at any time demand those terms and get its business rolling.

2. Carriers Should Not Have to Undergo State Commission Approval Processes to Adopt Previously Approved Interconnection Agreements

a. State Commission Approval Procedures Lack Uniformity Which Creates Unnecessary Expense for Competitive Carriers

Global NAPS and Universal fervently agree with MCI that state approval procedures for opted-into agreements are generally time-consuming, unpredictable and expensive. In a few states, the process is relatively painless, but the lack of uniformity creates confusion and unnecessary expense for CLECs. Both Global NAPs and Universal have had to learn and comply with those procedures in various states, only to suffer the consequences of having to wait an unreasonable amount of time to begin offering services without benefiting from retroactivity when the agreement is finally approved.

The California opt-in approval process, for example, is time consuming and expensive.

Opt-in requests must be made by advice letter. Carriers are required to comply with all advice letter regulations and coordinate with a California Public Utility Commission ("CA PUC") coordinator to ensure that the correct advice letter number is being filed. The advice letter must contain specific language regarding every party's rights to object to the opt-in and may be rejected if it doesn't include specific language regarding the ILEC's right to object to the opt-in. CLECs must include a "notice of adoption" as well, which is the same letter the CLEC files with the ILEC advising that ILEC that the CLEC has exercised its rights under 252(i) to adopt a particular, previously approved interconnection agreement. An original and four copies of the advice letter, notice of adoption and certificate of service must be filed with CA PUC, then copies must be served simultaneously on all relevant ILEC attorneys and the CA PUC's full service list of *all* CA ILECs, CLECs, IXCs and other interested parties (the current list contains 248 names and addresses). The agreement does not go into effect until after the expiration of a 15 day protest period, which begins after the CA PUC has accepted an advice letter for filing.[2]

New Jersey has not even adopted rules to implement the local competition provisions of the 1996 Telecommunications Act. Thus, its approval procedures are archaic and unfair to competitive carriers. As MCI explained, an administrative law judge *and* the New Jersey Board of Public Utilities ("NJ BPU") review and approve adoption requests, and there is no specified time period in which the NJ BPU must act. Thus, it can take months for an adoption request to be

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[2] See Process For Adopting a Previously Approved Agreement (or Portions of an Agreement) Pursuant to 252(i), Revised Rule 7.1 of Resolution ALJ-178, Public Utils. Com'n of the State of California (Nov. 4, 1999).

approved;[3] in the meantime, the adopting carrier cannot provide service.

In Oregon, by contrast, a second agreement merely adopting an agreement previously approved is not subject to a notice-and-comment procedure and the Public Utilities Commission ("OR PUC") processes the agreement on an expedited basis. In no event will the OR PUC take more than 90 days to accept or reject the agreement.[4] After the 1996 Act, other state commissions should have adopted similar procedures, but most have not.

b. Opt-In Agreements Should Be Deemed Approved Upon Filing

As the FCC has explained, negotiation is not required to implement a section 252(i) opt-in arrangement.[5] Indeed, not only is there no need to negotiate opt-in requests, the FCC has explicitly stated that "neither party may alter the terms of the underlying agreement."[6] Further, the Commission has concluded on more than one occasion that a carrier seeking interconnection pursuant to Section 252(i) "shall be permitted to obtain its statutory rights on an expedited basis."[7] As explained by MCI, there is no statutory mandate or support for state approval of

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[3] See, e.g., In re Global Naps, Docket No. T098070426, New Jersey Bd. of Public Utils., (July 12, 1999).

[4] See Petitions for Enforcement of Interconnection Agreements, Oregon Administrative Rule 860-016-0050.

[5] See In the Matter of Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc., Order, CC Docket No. 99-198, DA 99-1552, ¶ 4 (rel. Aug. 5, 1999) (*citing Local Competition Order*, *infra* note 7).

[6] Id.

[7] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996) at 16141, ¶ 1321; Global NAPs, Inc. Petition for Preemption of Jurisdiction of New Jersey Board of Public Utilities Regarding Interconnection

adopted agreements, which are clearly distinguishable from arbitrated or negotiated agreements.[8]

Thus, Global NAPS and Universal concur with MCI that under Section 252(i) and FCC Rule 51.809, requesting carriers need not (and should not have to) undergo a state commission's approval process to adopt an agreement which has previously been approved by that same state commission. Until the Commission explicitly makes automatic approval a uniform federal policy, CLECs will continue to experience delay at the state level and will suffer competitive harm.

3. Without Expedited Review of Rule 51.809(b) Claims, ILECs Can (and Do) Engage In Anti-Competitive Behavior

Universal has first-hand experience in dealing with stalling tactics by ILECs. Universal recently sent a letter to GTE declaring its intent to adopt, *in its entirety*, a GTE interconnection agreement. In response to that letter, GTE demanded that Universal agree to several terms and conditions. One of these conditions includes a concession that terms requiring payment of reciprocal compensation for ISP-bound traffic are not available for adoption. GTE claims that it is not obligated to provide those previously-approved terms because it "never intended for Internet traffic passing through a telecommunications carrier to be included in the definition of local traffic" and the "cost of the providing [transmission of Internet-bound traffic] service is not cost-based." GTE fails to substantiate its claim that providing these terms to Universal would result in higher costs. Universal, obviously, disagrees with GTE; but in the absence of an expedited procedure for resolving the dispute (that is, an expedited procedure for GTE to make

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Dispute with Bell Atlantic-New Jersey, CC Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999) at 10, ¶20.

[8] Id.

whatever case it can that the particular provisions it now doesn't like may be exempted from Section 252(i) under the terms of Rule 51.809(b) or (c)), the mere assertion of an objection by an ILEC to any provision in an interconnection agreement can bring the entire opt-in process to a grinding halt.

Universal also had serious difficulty with opting into a previously approved US WEST agreement. *After* Universal and US WEST agreed that Universal would opt into the agreement *in its entirety*, US WEST added a hand-written addendum after its signature indicating that ISP-bound traffic wasn't included in the definition of local traffic; then US WEST filed the altered agreement. Fortunately Universal was successful in the subsequent arbitration before the OR PUC, and US WEST excised the addendum. US WEST's actions added ***six months*** to the opt-in process.

This Commission limited the acceptable reasons that ILECs can object to adoptions precisely to discourage this type of stonewalling and anti-competitive behavior. The Commission's rules allow ILECs to deny the availability of a particular interconnection, service or element to a requesting telecommunications carrier only under very narrow circumstances. Specifically, an ILEC may deny the availability of a particular provision when it has proven to the state commission that the cost of providing that provision is greater than initially, or adherence to that provision has become technically infeasible.[9] Furthermore, the ILEC bears the burden of proof of establishing such claims. Absent such a showing, section 51.809(a) mandates

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[9] 47 C.F.R. § 51.809(b)(1).

that the ILEC make available, without delay, any individual interconnection, service, or network element arrangement contained in any approved, opted-into agreement upon the same rates, terms and conditions as those provided in the agreement. [10]

In addition, some states already provide an expedited procedure for interconnection disputes. The OR PUC, for example, allows a party to move for an expedited procedure for enforcement of interconnection agreements, whether those agreements were entered into through negotiation, mediation, arbitration, or adoption of a prior agreement. After the movant files a proposed schedule, the presiding officer schedules a conference "as soon as practicable" to determine whether an expedited schedule is warranted, and if so, to establish an expedited procedural schedule. If the presiding officer determines an expedited procedure is warranted, he or she must establish a procedure that "ensures a prompt resolution of the merits of the dispute, consistent with due process, the need for speed, and the Commission's other obligations."

Similarly, the Pennsylvania Public Utility Commission ("PA PUC") ruled last May that disputes arising from requests by a competing local exchange carrier ("CLEC") to opt into an existing interconnection agreement are to be handled on an extremely expedited basis. Specifically, once a carrier files a complaint alleging a violation of the right to opt into an existing contract, the incumbent local exchange carrier ("ILEC") has ten days to file an answer, and the administrative law judge ("ALJ") must conduct an expedited hearing and issue a recommended decision within thirty days from the complaint. The subject matter of the hearing is limited to issues identified as

[10] 47 C.F.R. § 51.809(a).

relevant by FCC Rule 51.809, i.e., whether any aspect of the requested agreement has become technically infeasible, or whether the costs of providing any relevant service or function have increased. This type of procedure could be used as a model that all states should follow in handling this type of dispute.

4. During the Pendency of Any Rule 51.809(b) Challenge, the Remaining Portions of the Adopted Agreement Should Remain Binding

Global NAPs and Universal wholeheartedly agree that ILECs must not be permitted to delay the effectiveness of an entire adopted agreement simply by asserting section 51.809(b) objections. In addition to the reasons articulated by MCI, allowing ILECs to avoid compliance with the remaining (uncontested) portions of the agreement potentially violates Rule 51.715. Under that rule, ILECs must provide transport and termination of local telecommunications traffic immediately upon request of a CLEC without an existing interconnection arrangement. The ILEC must provide an interim arrangement for carrying local traffic while the parties negotiate transport and termination rates. Rule 51.715 recognizes that new competitive carriers can ill afford to wait for an ILEC's claims to be resolved.

5. **Conclusion**

For the reasons stated herein, Global NAPS and Universal wholeheartedly support MCI's Petition. Global NAPs and Universal respectfully request the Commission to issue a Declaratory Ruling clarifying that: 1) a CLEC's adoption of a previously state commission approved agreement is effective on the date a Notice of Adoption is filed, without commission re-approval; 2) an ILEC challenge under 47 C.F.R. §51.809(b) must be subject to expedited state commission review; 3) during the pendency of any challenge under 47 C.F.R. §51.809(b), the remaining portions of the

adopted agreement remain binding; 4) if an ILEC unsuccessfully challenges an adoption pursuant to 47 C.F.R. §51.809, the date of adoption is retroactive to the date of the Notice of Adoption; and 5) an ILEC will not be excused from its obligations pursuant to an adopted agreements unless it *proves* one or more circumstances specified in 47 C.F.R. §51.809.

Respectfully submitted,

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Date: March 31, 2000

CERTIFICATE OF SERVICE

I, Fariba Naim, do hereby certify, that on this 31st day of March, 2000, I have caused to be delivered by hand, a true and correct copy of Comments of Global NAPs, Inc. & Universal Telecom, Inc. in the Matter of MCI WorldCom's Petition for Declaratory Ruling to the following:

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